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8 Attorney for Plaintiff

9 Maureen Harrington

10 *as personal representative for the estate of Blaine Harrington III*

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MAUREEN HARRINGTON,
*AS PERSONAL REPRESENTATIVE
FOR THE ESTATE OF BLAINE
HARRINGTON III,*

Plaintiff,

V.

DEEPAK DUGAR, M.D. a MEDICAL
CORPORATION,

Defendant.

Civil Action No. 2:22-cv-08230-HDV-
E

**PLAINTIFF'S NOTICE OF FILING
SUPPLEMENTAL LEGAL
AUTHORITY REGARDING
PRETRIAL CONFERENCE**

Plaintiff Maureen Harrington, as Personal Representative for the Estate of
Blaine Harrington III ("Plaintiff"), hereby files this supplemental legal authority in
advance of the May 7, 2024 pretrial conference, and states as follows:

1 1. Plaintiff files this notice to bring certain legal authority to the Court’s
2 attention regarding which of Defendant’s remaining affirmative defenses (i.e.,
3 copyright misuse, innocent infringement, and unclean hands) is legal or equitable
4 in nature and therefore appropriate for consideration by the jury/the Court.
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6 2. As the Court knows, “[t]he Constitutional right to a jury trial extends
7 only to ‘legal’ as opposed to ‘equitable’ claims.” Revolution Eyewear, Inc. v.
8 Aspex Eyewear, Inc., No. CV 02-01087-VAP (CWx), 2008 U.S. Dist. LEXIS
9 108672, at *13 (C.D. Cal. Jan. 3, 2008) (citing Beacon Theatres Inc. v.
10 Westover, 359 U.S. 500, 510–11(1959)); see also Danjaq LLC v. Sony Corp., 263
11 F.3d 942, 962 (9th Cir. 2001) (noting that although the plaintiff had a jury trial
12 right as to his copyright infringement claims, he did not have a right to a jury on
13 the equitable defense of laches).
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15 3. Here, Defendant’s “innocent infringement” defense is legal in nature
16 and therefore should be submitted to the jury. See Clinton v. Adams, No. CV 10-
17 9476 ODW (PLAx), 2012 U.S. Dist. LEXIS 196209, at *15 (C.D. Cal. May 7,
18 2012) (“Finally, Defendants’ lack of willfulness (or ‘innocent infringement’) is
19 a jury question to be decided at trial.”); see also Feltner v. Columbia Pictures Tv.,
20 523 U.S. 340, 355 (1998) (“[T]he Seventh Amendment provides a right to a jury
21 trial on all issues pertinent to an award of statutory damages under § 504(c) of the
22 Copyright Act, including the amount itself.”).
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1 4. Defendant’s unclean hands and copyright misuse defenses, however,
2 are equitable in nature and not entitled to a jury trial. See, e.g., Matrix Int’l Textile,
3 Inc. v. Monopoly Textile, Inc., No. CV 16-0084 FMO (AJWx), 2017 U.S. Dist.
4 LEXIS 169462, at *4 (C.D. Cal. May 12, 2017) (“[T]he parties do not dispute that
5 unclean hands is an equitable defense that is tried by the court.”); Learning Tech.
6 Partners v. Univ. of the Incarnate Word, No. 14-cv-4322-PJH, 2016 U.S. Dist.
7 LEXIS 17169, at *6–7 (N.D. Cal. Feb. 11, 2016) (“[B]ecause there is no CACI
8 instruction or Ninth Circuit model instruction on the issue, and
9 because unclean hands is an issue properly decided by the court, the jury will not
10 be given an instruction on unclean hands.”); MDY Indus., LLC v. Blizzard Entm’t,
11 Inc., 629 F.3d 928, 941 (9th Cir. 2010) (“Copyright misuse is an equitable defense
12 to copyright infringement.”); Rimini St., Inc. v. Oracle Int’l Corp., No. 2:14-CV-
13 01699-LRH-PAL, 2015 U.S. Dist. LEXIS 89295, at *9 (D. Nev. July 9, 2015)
14 (“The *equitable defense* of copyright misuse ‘forbids a copyright holder from
15 securing an exclusive right or limited monopoly not granted by the Copyright
16 Office’ by preventing ‘copyright holders from leveraging their limited monopoly
17 to allow them control of areas outside the monopoly.’”) (emphasis added)
18 (quoting A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1026 (9th Cir.
19 2001)).
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1 5. In Classical Silk, Inc. v. Dolan Grp., Inc., No. CV 14-09224-AB
2 (MRWx), 2016 U.S. Dist. LEXIS 193774 (C.D. Cal. Mar. 21, 2016), the court was
3 confronted with a similar situation where a defendant raised copyright misuse and
4 unclean hands defenses in response to a claim for copyright infringement.
5

6 6. There, the court determined that it was proper to bifurcate the trial
7 between liability/damages (for the jury to decide) and the defendant's equitable
8 defenses (for the court to decide) to avoid unfair prejudice:
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10 And "while a court may seek the jury's aid as a fact-
11 finding body in a non-jury trial," (Id.) courts routinely
12 bifurcate the legal and equitable issues at trial where the
13 issues are divisible and evidence submitted in support of
14 the equitable issues would be unfairly prejudicial. See,
15 e.g., JIPC Mgmt., Inc. v. Incredible Pizza Co., No. CV
16 08-04310, 2009 U.S. Dist. LEXIS 133019, 2009 WL
17 8591607, at *20 (C.D. Cal. July 14, 2009) (bifurcating
18 unclean hands defense from trial on liability because the
19 defense placed "both parties' good or bad faith at issue
20 in ways that are not relevant to a finding of liability for
21 trademark infringement" and "[p]resenting evidence on
22 these issues would pose a risk of prejudice and confuse
23 the jury") (citing Fed. R. Civ. Proc. 42(b) and Danjaq
24 LLC v. Sony Corp., 263 F.3d 942, 961 (9th Cir. 2001)
("One favored purpose of bifurcation is to accomplish
just what the district court sought to do here-avoiding a
difficult question by first dealing with an easier,
dispositive issue.")).

Here, Defendants' evidence of Plaintiff's wrongful
injection of the designs into foreign markets is irrelevant
to the question of willful infringement. Plaintiff's theory
of access does not concern foreign markets - to the
contrary, Plaintiff contends that Defendants accessed the
designs through their dealings with Plaintiff directly.

1 Defendants thus need not address Plaintiff's intentional
2 injection of the designs into foreign markets to rebut
3 Plaintiff's willful infringement claim, and indeed, such
4 evidence does not appear to be relevant. Rather,
5 Defendants' evidence concerning Plaintiff's injection of
6 the designs in foreign markets is tied only to Defendants'
7 theory of unclean hands and misuse of copyright. And as
8 a result, this evidence is divisible from the other factual
9 issues at trial and need not be presented to the jury even
10 for an advisory verdict. The Court concludes that
11 bifurcation of Defendants' equitable affirmative
12 defenses is appropriate to avoid unfair prejudice to
13 Plaintiff and potentially avoid presentation of evidence
14 on those defenses if the jury finds no liability.

15 7. Plaintiff brings this legal authority to the Court's attention as it is
16 highly pertinent to how the Court conducts the trial in this matter.

17 Dated: May 6, 2024.

18 By: /s/ Lauren Hausman
19 LAUREN HAUSMAN
20 Attorney for Plaintiff
21 Maureen Harrington,
22 *as personal representative for the*
23 *estate of Blaine Harrington III*

24 CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I electronically filed the foregoing
document using CM/ECF, which will electronically serve all counsel of record.

/s/ Lauren Hausman
Lauren Hausman, Esq.